

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

WALLIS H. CLARK III dba CARMET
TRADING CO. & CARMET SCIENTIFIC,

Plaintiff,

vs.

FLA CARD SERVICES, N.A., LINDA BUCK,
TONY GREEN, I.C. SYSTEM, BETH
BROWN and DOES 1-10 incl.,

Defendants.

Case No: C 09-5240 SBA

**ORDER GRANTING PLAINTIFF'S
MOTION FOR CONTINUANCE**

Docket 27

Plaintiff Wallis H. Clark III dba Carmet Trading Co. & Carmet Scientific has filed a pro se "Ex Parte Motion Requesting Continuance of Defendants [sic] Motion to Strike and Demurrer." (Docket 27.) Plaintiff seeks a continuance of the hearing on Defendants' Motion to Dismiss (incorrectly styled as a motion to strike and demurrer), which he apparently believes is scheduled for March 16, 2010. In fact, the motion hearing date is March 30, 2010, not March 16, 2010. In addition, Plaintiff has not adequately explained why a continuance is warranted. Plaintiff claims that he "has not had adequate time to respond" to the motion to dismiss. Mot. at 2. Yet, as Defendants correctly note in their response, their motion has been on file since November 12, 2009, thus affording Plaintiff more than ample opportunity to prepare an opposition.¹

The deadline for Plaintiff's opposition brief has passed and Plaintiff has failed to demonstrate good cause for the requested continuance. This Court's standing orders state that the failure to file a response to a motion may be deemed to be a consent to the granting of the

¹ The case was later reassigned from a Magistrate Judge and Defendants renoticed their motion on this Court's calendar.

1 unopposed motion. Though Plaintiff is representing himself in this action, he is subject to the
2 same procedural rules as a party represented by counsel. See King v. Atiyeh, 814 F.2d 565,
3 567 (9th Cir. 1987). As such, it is well within the discretion of the Court to grant Defendants'
4 motion to dismiss as unopposed. See Fed.R.Civ.P. 41(b); Ghazali v. Moran, 46 F.3d 52, 53
5 (9th Cir. 1995). Nevertheless, mindful of its obligation to first consider to less drastic
6 alternatives, the Court will afford Plaintiff one further opportunity to respond to the pending
7 motion. Accordingly,

8 IT IS HEREBY ORDERED THAT


9 1. Plaintiff's motion for a continuance is GRANTED. Plaintiff shall have until
10 March 30, 2010 to file his response (i.e., either an opposition or a statement of non-opposition)
11 to Defendants' motion to dismiss. Plaintiff's response shall comply in all respects with the
12 Federal Rules of Civil Procedure and the Court's Civil Local Rules including, without
13 limitation, Civil Local Rules 7-3 through 7-5. **Plaintiff is warned that the failure to file a**
14 **response by this deadline and/or to comply with this Order or any other applicable**
15 **procedural rules may result in the granting of the pending motion and the dismissal of**
16 **this action without further notice.** In the event Plaintiff timely files a response, Defendants
17 may file a reply by April 6, 2010.

18 2. The hearing on the motion to dismiss and the Case Management Conference are
19 CONTINUED from March 30, 2010 to April 20, 2010 at 1:00 p.m. The Court, in its
20 discretion, may resolve the motion in advance of the hearing, without oral argument, pursuant
21 to Federal Rule of Civil Procedure 78(b). The parties are advised to check the Court's website
22 to determine whether an appearance is required.

23 3. This Order terminates Docket 27.

24 IT IS SO ORDERED.

25 Dated: March 16, 2010


26 SAUNDRA BROWN ARMSTRONG
27 United States District Judge
28

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 CLARK et al,

5 Plaintiff,

6 v.

7 BANK OF AMERICA et al,

8 Defendant.
9 _____/

Case Number: CV09-05240 SBA

10 **CERTIFICATE OF SERVICE**

11
12 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
13 Court, Northern District of California.

14 That on March 17, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said
15 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing
16 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
17 located in the Clerk's office.

18 Wallis H. Clark
19 3852 Montecito Avenue
20 Santa Rosa, CA 95404

21 Dated: March 17, 2010

Richard W. Wieking, Clerk

22 By: LISA R CLARK, Deputy Clerk
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